

U.S. DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

DONQUARION LEWIS; KE'AUJANAA

SHEPHERD-FRIDAY; and K.B.,

by and through her parent

and next friend, H.B.,

Case No. 1:22-cv-00838-RJJ-PJG

Plaintiffs, Hon. Robert J. Jonker

vs. Mag. Phillip J. Green

MICHIGAN DEPARTMENT OF

EDUCATION, a governmental

agency,

Defendant.

The Deposition of REBECCA A. MC INTYRE,

Taken at 525 West Ottawa Street,

Lansing, Michigan,

Commencing at 10:01 a.m.,

Monday, July 15, 2024,

Before Peggy S. Savage, CSR-4189, RPR.

1 A. Until they come into compliance and everything is
2 verified and deemed corrected.

3 Q. Okay.

4 A. We -- there is another level. So our TA provider
5 would be -- whenever corrective action is issued out
6 of a state complaint, one of those state-level
7 monitors gets that corrective action and they oversee
8 it. So if the district submits they have -- you know,
9 they have to have an updated progress report and
10 everything giving us their policies and procedures by
11 three months. Then those would go to that state-level
12 monitor. They would review those if there's -- if
13 they're not acceptable and there's something -- an
14 issue in there, they would work with the district to
15 say, "This is what's not -- we're not approving this
16 yet. This is what you need to address still."

17 So they are involved in that -- to that
18 level, but they are not like in the weeds with the
19 district at that point.

20 Q. Okay. And McKee is in the weeds with the district --

21 A. Yes.

22 Q. -- is what you're saying?

23 Okay. Okay. Still on page 36. The last
24 paragraph says: An SEA may take over the direct
25 provision of special ed and related services in

1 certain circumstances. One of the circumstances is
2 that if the LEA is unable to establish and maintain
3 programs of FAPE, meeting Part B requirements, then
4 the SEA must use payments that would otherwise have
5 been available to the district.

6 Has MDE ever done this with any school
7 district?

8 A. To my knowledge, no, but ISD has.

9 Q. How has the ISD done that?

10 A. And they have done that with our support.

11 Q. Okay. So which ISD are you speaking to?

12 A. Because the state education agency flows money out to
13 the ISDs. So for the purposes of the -- the uniform
14 grant guidance, that is the LEA is the ISD. They are
15 the subrecipients of the grant.

16 Q. Okay.

17 A. So what the -- what the ISD does from there with their
18 IDEA dollars, every ISD is different in how they do
19 that, but, yes, they have -- there are ISDs who are
20 withholding dollars and hiring people and operating
21 programs.

22 Q. Do you know which ISDs have done that?

23 A. I know that Kent ISD has done it in the past, because
24 I was a part of that.

25 Q. Okay.

1 ISDs based on --

2 A. No.

3 Q. -- the issues established? No. Okay.

4 So from what I understand based on the
5 flow-through money, the SEA takes money, sends it to
6 the ISDs. The ISDs are viewed as the LEA at that
7 point in time?

8 A. Yes.

9 Q. Under IDEA, the LEA is responsible for providing a
10 FAPE, correct?

11 A. For -- yes, for ensuring that a FAPE is provided.

12 Q. Okay. Does MDE OSE have any opinion about the ISDs
13 claiming that they have no responsibility to provide
14 or ensure FAPE at the due process level?

15 A. We are working on that.

16 Q. Tell us more about that.

17 A. That -- that has been communicated for the last seven
18 years.

19 Q. Okay. Is there anything that MDE OSE is doing to try
20 and rectify that situation so that students receive
21 FAPE?

22 A. We have been -- well, our new Deputy Superintendent
23 Michelle Harmala has actually gotten in front of a
24 number of audiences that we have not been able to get
25 in front of before. They actually just met with -- I

1 A. Yes.

2 Q. Okay. And you mentioned the assistant superintendents
3 going before different audiences to try and speak to
4 them about this issue?

5 A. Yeah.

6 Q. Are you aware that ISDs are filing motions to dismiss
7 based on the fact that they are not responsible for
8 ensuring FAPE for students in due process hearings?

9 A. No.

10 Q. Okay. Are there any other avenues that MDE is
11 pursuing to ensure that LEAs are taking responsibility
12 for ensuring a FAPE?

13 A. We have recently released our working document, it's
14 like 82 pages long, that shows the whole integrated
15 mon- -- all eight components, what we've been doing
16 within that work. We have, like I said, the -- we met
17 with five ISDs who, as part of this document, were the
18 first -- this document being the OSE- --

19 Q. OSE- --

20 A. -- OSEP's document --

21 Q. Okay. Yep.

22 A. -- were the first to go through the credible
23 allegations, because they were identified in news
24 articles regarding special education transportation
25 and students with IEPs.

1 And so we started work with each of those
2 five ISDs, inquiring about what the ISDs have done to
3 ensure their local districts, you know, what -- what's
4 going on with these. And in working with them, we met
5 with their superintendents. We shared the information
6 and actually gave them the -- what they have to fill
7 out annually through the State for the IDEA grant
8 dollars; and showed them that when they fill out that
9 application, the very first thing that they are
10 agreeing to is ensuring FAPE for students within
11 their -- with IEPs in their jurisdiction.

12 And so that has, I believe, had a profound
13 effect on them. I don't think the problem is -- I
14 don't want to keep saying "I don't think." The
15 problem isn't the special education directors
16 necessarily, as we have to get superintendents to
17 understand, and so that's where the focus is.

18 Q. Okay. Which five ISDs are involved?

19 A. Lapeer, Oakland, Wayne, Washtenaw, Macomb. I have to
20 picture the faces around the table.

21 Q. Do you see a difference between the responsibility to
22 provide a FAPE-appropriate public education and the
23 responsibility to ensure a FAPE-appropriate public
24 education?

25 A. Yes, I do.

1 DEPOSITION EXHIBIT 69
2
311:17 a.m.
45 BY MS. DIAZ:
67 Q. And this says it's the OSC Continuum of Improvement,
8 Correction, Incentives, and Sanctions. Is that
9 correct?
1011 A. Yes.
12Q. Okay. This document was from October of 2022, and it
has a draft watermark on it. Do you know if there's
been a finalized document?
13A. It is part of -- I believe part of the big document.
14

Q. The big one. Okay.

15 And this document discusses sanctions
16 towards ISDs; is that correct?
17A. Yes, among other things.
18Q. And, again, this is not directed at districts
themselves?
19A. Mmm-hmm.
20Q. Why not?
21A. Because the intermediate school districts have
jurisdiction over their member districts.
22Q. Okay. And because they have jurisdiction over their
member districts, do you expect the ISDs to bring
their member districts in line with the law?
23A. They need to monitor -- monitor being not just going
24

1 the concern with LRE issues that --

2 A. Yes.

3 MARKED FOR IDENTIFICATION

4 DEPOSITION EXHIBIT 4

5 12:16 p.m.

6 BY MS. DIAZ:

7 Q. Okay. Let's look at Exhibit 4 then.

8 Before you dive into that one, you said
9 that the ISDs are more and more looking at their
10 districts. Why is this happening more and more?

11 A. Because the special education directors are
12 understanding they do have a general supervision
13 responsibility. It's -- in some cases, it's do they
14 have the support of their superintendent and
15 understanding. And then in other cases, they've --
16 they have taken the lead and demonstrated to their
17 superintendent where that responsibility is and
18 they've created a system. I think the -- although I
19 have not seen it, Eastern UP ISD has created a system,
20 is what they've told us. Saginaw ISD. Again, I keep
21 trying to picture faces in the room. I don't know.
22 There were a number of people in the room that said --
23 because I asked, how many of you actually have a
24 developed system, and I was surprised. Because I knew
25 about Kent, but I was surprised at the number in the

1 room that raised their hand.

2 Q. And what do you think is the reason for this new
3 understanding or finally coming to an understanding of
4 the responsibilities they have?

5 A. Because we talk about it at every single director
6 meeting and any at MAASE Summer Institute. We
7 received feedback last year that they are sick of
8 hearing about general supervision and want to know
9 when we're just going to make it a breakout instead of
10 a keynote and -- but that's the work of our office.
11 So we won't -- so they're -- they get it.

12 Q. Okay. And when did you start talking about this to
13 the point where they were getting sick of it?

14 A. Ad nauseam.

15 Q. Yeah.

16 A. Well, I mean, since 2019, since I've been on board.

17 Q. Okay. And why did you start -- why did this shift
18 occur, this, you know, talking campaign about the
19 ISDs' responsibility occurring?

20 A. I think it really -- listening to what Teri has said,
21 and she shares out with everybody, that this really
22 started with an understanding with U.S. Department of
23 Ed and John Andrejack talking fiscally; and
24 understanding that in Michigan, our ISDs are the LEAs.
25 That's who we -- that's who the subrecipients are, but

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1 we were treating 980 school districts as
2 subrecipients, but they weren't our subrecipients,
3 so -- they were the ISDs' subrecipients. Actually,
4 there's no -- there is no subrecipient to a
5 subrecipient, so that was a misstatement, but, yeah,
6 they were under the purview of the ISDs.

7 Q. Okay.

8 A. And so that whole thing, that -- that was chaos for
9 like the first two years of trying to message that
10 out. And so -- but I think more and more we'd just
11 done it so much that more and more people are hearing
12 it and accepting it, and they're just finally moving
13 forward with their work.

Q. Why was that so chaotic the first few years?

15 A. Because it's a complete change in understanding, and
16 ISDs have always felt that they are service agencies.
17 They're there to provide a service. But in providing
18 that service, they also felt that they had to protect
19 their local districts. And so by putting them in the
20 driver's seat and saying you're a subrecipient, you
21 have general supervision responsibilities, they now,
22 all of a sudden, are like how -- how do we do that,
23 how do we protect our districts but yet come in and be
24 enforcer to our direct.

25 So it's that being an enforcer that they

1 have resisted, and we've tried to help them see that
2 it's not monitoring, monitoring, monitoring, like
3 student record reviews and everything, but it's like
4 monitoring your weight, keeping -- you know, keeping
5 your pulse on things and providing technical
6 assistance and looking at data. And that's why we
7 created our 82-page document to say, "This is the work
8 that we've been doing for the last six years and this
9 is, you know, how we're doing it."

10 We reserve the right to continuously
11 improve our system. Because as we look at data, that
12 data is going to continue to inform us where we need
13 to do better in our work or we need to focus
14 differently, and they're seeing that, and they're
15 starting to do it.

16 Q. Okay. Why do you think they resisted enforcing with
17 their local districts?

18 A. I think in their opinion, they were the -- they had
19 to -- they were the protectors, the service providers
20 and the protectors of their member districts.

21 Q. Who were they protecting the member districts from?

22 A. Is that a rhetorical question or a real question?

23 Q. A real question. Who did they think --

24 A. We ask the same questions. So they're protecting them
25 from us and from -- from parents.

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improving our integrated monitoring. So every day we
get better at what we do and ...

3 Q. Okay. Let's look at Exhibit 72.

4 MARKED FOR IDENTIFICATION

5 DEPOSITION EXHIBIT 72

6 | 4:27 p.m.

7 BY MS. DIAZ:

8 Q. These are -- well, it's part of the slides from a SEAC
9 presentation. What is SEAC?

10 A. Special Education Advisory Committee. It's a
11 state-level committee.

12 Q. Okay. And then if you turn to page 55, it's the
13 second page, it says: Due Process Complaints and
14 Hearings, and Rebecca McIntyre.

Why would you be presenting at SEAC?

16 A. It's a requirement.

17 Q. Under what?

18 A. Under IDEA. We report out all final decisions to
19 SEAC. The state education agency has to report, share
20 with SEAC.

21 Q. All final decisions on what?

22 A. Due process hearings.

23 Q. Okay. Do you get input from SEAC based on those due
24 process hearing decisions?

25 A. They review the decisions that are fully redacted, and

1 then they provide input into what -- what gaps in
2 understanding there may be, and they help us identify
3 if there is guidance that's needed, if -- because
4 there are, what, 80-some different people in there
5 bringing different perspectives as do we need to
6 understand things differently, be able to present the
7 information and requirements differently. So this is
8 one of the essential functions of SEAC.

9 Q. And on page 56, it looks like you reported out about a
10 KSF decision.

11 A. Mmm-hmm.

12 Q. And it looks like this is a situation where you had to
13 place a state complaint in abeyance.

14 Do you know what happened with that state
15 complaint?

16 A. Do I know what happened with it?

17 Q. Were the issues resolved with that state complaint
18 or --

19 A. Well, it was -- it was put into abeyance, and I
20 believe that -- I would have to go back and look, but
21 I think that this -- well, he came -- the ALJ issued a
22 final decision, and so I don't know what that final
23 decision was. We would have had to -- this is
24 probably the state complaint we had to dismiss.

25 Q. Okay. But without seeing it, you're not exactly sure

1 BY MS. DIAZ:

2 Q. Okay. And then let's look at 73 -- oh, I think we
3 already talked about that. Let me check.

4 No, let's look at 73, and then 37 of it.

5 MARKED FOR IDENTIFICATION

6 DEPOSITION EXHIBIT 73

7 4:31 p.m.

8 BY MS. DIAZ:

9 Q. This is a SEAC New Member Orientation from September
10 of 2020, slide deck, and page 37 talks about
11 administrative law judges.

12 Do you recall if you would have presented
13 this information at SEAC?

14 A. Yes.

15 Q. Okay. And it says that there's certain requirements
16 for ALJs, and one of them is that they possess
17 knowledge of an ability to understand the provisions
18 of IDEA, federal and state regs pertain to IDEA, legal
19 interpretations of IDEA by federal and state courts,
20 conduct hearings in accordance with appropriate
21 standard legal practice, and render and write
22 decisions. Correct?

23 A. Correct.

24 Q. Okay. How does MDE know that the ALJs possess the
25 knowledge and ability to do those things?

1 A. We provide them training annually, and that's part of
2 looking at the final decisions, sharing final
3 decisions with SEAC, and getting input.

4 Q. Okay. What training do you provide to ALJs annually?

5 A. We would have to look back at the record. Each year
6 it's different. They used to go to Lehigh, go to LRP.
7 Last year they received a two-day training from
8 Pingora. They just received a two-day training again
9 from Pingora, as well as they've attended CASE -- I
10 think it was CASE and CADDRA.

11 So we're trying to provide them as much --
12 the Pingora trainings are Michigan specific, because
13 we have told them, you know, that Lehigh, LRP, CADDRA,
14 those are all from a national perspective and topic
15 specific, where we need process specific.

16 Q. Okay. So you provide the trainings for the ALJs. Is
17 there any assessment done to determine what they've
18 learned through those trainings?

19 A. Assessment, I think, plus watching the data.

20 Q. Okay. How does watching the data determine whether or
21 not they've learned?

22 A. Because there's topic-specific information that they
23 are learning, and then we watch the data to see that
24 there's progress.

25 Q. Okay. What does it actually mean to watch the data?

1 A. Pull it, look at it, analyze it.

2 Q. Are you looking -- like what data are you looking at
3 specifically? What are you pulling?

4 A. Hearing data.

5 Q. Okay. And what specific pieces of hearing data are
6 you looking at?

7 A. File date, who's filing, who the attorneys are on both
8 sides, any motions that are made, when they're made,
9 looking at that information.

10 Q. And who looks at that information to determine if ALJs
11 are demonstrating that they understand Michigan law
12 and federal law?

13 A. I was looking. I still look. Our -- we have a due
14 process -- she's not a coordinator, but she's like a
15 support, administrative support, in our office, and
16 she -- she updates -- she keeps a spreadsheet and
17 updates us on all of the hearings, and we look at
18 issues and ...

19 Q. Do you look at substantive issues as well as the time
20 lines?

21 A. And when you say -- we look at the issue as a -- as
22 like the topics we're following. We're not looking in
23 at all the details of a hearing and looking to see if
24 they got that information right.

25 Q. Okay. When you say a topic, what do you mean?

1 Q. That's different than the one we looked at today; is
2 that correct?

3 A. That was state complaint investigators.

4 Q. Okay. So, yes, then that would be different. Okay.

5 A. I had COVID at that time, so I do not actually have a
6 copy of that. You'll have to get that from Chantel.

7 MS. HENDLEY: What year was this?

8 THE WITNESS: That was August of '23.

9 Maybe it was September. Sorry. It was either August
10 or September.

11 MS. HENDLEY: That's fine.

12 BY MS. DIAZ:

13 Q. Regarding the due process system, previously you had
14 said that you were not aware that ISDs were filing
15 motions to dismiss in due process proceedings alleging
16 that they weren't responsible for ensuring IDEA
17 compliance. Do you remember talking about that
18 earlier?

19 A. Yes.

20 Q. Okay. So for the purposes of this questioning, I'm
21 going to offer that they are doing that. Does that
22 surprise you that they would file motions dismissing
23 that they are not responsible for ensuring IDEA is
24 implemented?

25 A. I haven't been reviewing the complaints as they came

1 in. So does it surprise me? I -- I guess. Maybe.

2 Are they -- I guess I don't understand the situation.

3 Is it just a stand-alone complaint filed against them

4 or are they filed as a co?

5 Q. So, for example, a due process hearing filed against
6 the school district and the ISD.

7 A. The co. Okay.

8 Q. Yes.

9 A. Okay. I understand better now. I thought it was just
10 filed against them.

11 Yeah, I guess it surprises me but doesn't
12 surprise me. It surprises me it's happening. It
13 doesn't surprise me that they are pushing back, and
14 that wouldn't -- that would be more probably their
15 attorney's --

16 Q. Okay.

17 A. -- defense.

18 Q. When you talked about Michigan-specific training, are
19 the ALJs trained on the responsibilities that ISDs
20 have within Michigan?

21 A. They are now.

22 Q. Okay.

23 A. They are coming up to speed.

24 Q. When would that training have taken place?

25 A. Like I said, I wasn't at the --

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1 You have SEAC that looks at the due process hearing
2 decisions and brings up any concerns that they see.
3 Based on that, would you then provide training to the
4 ALJs?

5 A. Yes.

6 Q. Okay. Okay. So I just want to go back, because I
7 think that we didn't necessarily get a complete answer
8 out of this one.

9 How does MDE actually ensure that the ALJs
10 possess the knowledge and ability to understand the
11 legal interpretations of IDEA and MARSE?

12 MS. HENDLEY: Objection, form.

13 BY MS. DIAZ:

14 Q. You can still answer it.

15 A. Just reviewing data. I guess there's no -- there is
16 no review and check, check, check.

17 Q. To demonstrate that they understand IDEA and MARSE?

18 A. Correct.

19 MS. DIAZ: Okay.

20 MS. ABDNOUR: Let's take -- can we take a
21 break?

22 MS. DIAZ: Yeah.

23 (Off the record at 4:47 p.m.)

24 (Back on the record at 4:48 p.m.)

25 BY MS. DIAZ:

1 Q. Okay. So I hear that you're reviewing data, but
2 you're not looking at the decisions specifically. So
3 how is MDE ensuring that the ALJs are actually -- that
4 they actually have the ability to understand the legal
5 interpretations of IDEA and MARSE?

6 MS. HENDLEY: Objection, form.

7 You can still answer.

8 THE WITNESS: So I gave you what I know.
9 We look at the data. We're following that. We're not
10 looking at the substantive nature of the decisions.

11 BY MS. DIAZ:

12 Q. Okay. Who would know how MDE is ensuring that the
13 ALJs possess the knowledge of and ability to
14 understand legal interpretations of IDEA and MARSE?

15 A. I don't know.

16 Q. Okay.

17 A. But -- I mean, I don't know.

18 Q. Okay. As a responsibility under IDEA, it's MDE's
19 responsibility to ensure that, correct?

20 A. Yes. We have a memorandum of understanding --

21 Q. Yes.

22 A. -- between MDE and MOAHR, which is part of LARA --

23 Q. Yep.

24 A. -- and LARA is responsible for ensuring that those
25 ALJs are following the memorandum of understanding,

1 performance review. Has MDE ever done a performance
2 review?

3 A. The quality and timeliness of services provided.

4 Yeah, we do -- they send over -- they being MOAHR --
5 sends over a list of all of the hearings, and they
6 have -- they send it to Precious. Precious sends it
7 on to myself, Chantel, and our due process
8 administrative support, and they ask us to verify --
9 or Precious asks us to verify the timeliness of those
10 and whether they are considered timely or not.

11 Q. Okay. And then what about the quality of the
12 services?

13 A. Nope.

14 Q. Okay.

15 A. And quality is not just about the substantive written
16 portion.

17 Q. Okay. What does quality include?

18 A. It's how decisions are being issued and how hearings
19 are being managed.

20 Q. Okay. And you said that there were five ALJs that are
21 able to do special education cases; is that correct?

22 A. I believe there are.

23 Q. Okay. And how does MDE determine whether the ALJs are
24 able to do special education cases?

25 A. LARA does.

1 Q. LARA does. Okay.

2 Do you think that five ALJs is an adequate
3 number of ALJs for special education cases?

4 A. So our ALJs are not assigned only to special
5 education. And that is a LARA process that we are --
6 we have talked about, so -- with LARA.

7 Q. Okay. So are you saying that five is or is not an
8 adequate number?

9 A. It is not an adequate number.

10 Q. Okay. And it's not adequate because they're also
11 doing other cases too; is that what --

12 A. Correct.

13 Q. -- I'm understanding you saying? Okay.

14 Do you think it would be adequate if they
15 were only doing special education cases?

16 A. That's what we have asked for, at least some of them
17 need to do just special education cases. And that, I
18 think, is going to be part of the new MOU.

19 Q. Okay. And when do you anticipate the new MOU being
20 out?

21 A. Along with the MOU, they're developing -- "they" being
22 our office and our office administrative law -- are
23 developing a set of procedures that the ALJs have to
24 follow; so they're internal procedures. Indiana has a
25 very similar set. So we are starting with those and

1 Michiganizing them, and then they will be an appendix
2 to our MOU, with the expectation that they'll follow
3 those internal procedures.

4 Q. And what will those internal procedures be covering?

5 A. Process.

6 Q. As in what?

7 A. Process specific to IDEA and not process that can be
8 utilized in insurance and --

9 Q. Okay.

10 A. -- other things.

11 Q. Okay. How long have five judges been assigned for
12 special education cases?

13 A. I think probably for at least three years. During the
14 pandemic, we maybe had three. And then coming out of
15 the pandemic, we ordered two more. We added.

16 Q. Okay. Prior to the pandemic, how many were there?

17 A. I think there were four.

18 Q. Okay. How long have you been under the impression
19 that five was not an adequate number of ALJs?

20 A. Well, we just talked about this back in June with, I
21 guess, deepening our understanding that the ALJs are
22 not just covering special education. Like I said, all
23 of that is handled by LARA, so that's ...

24 Q. And how did you learn that?

25 A. Through meeting with them and asking questions.

1 Q. Okay. And what prompted all those questions?

2 A. Our training and looking at the data.

3 Q. Okay. And which data specifically prompted that?

4 A. The motions that were extending, extending, extending,
5 because that is an acceptable or an allowable -- I
6 don't know the right word to use -- under other
7 different types of procedures but not necessarily
8 under IDEA.

9 Q. Okay. So you're saying the extending of the time line
10 is allowable under other areas besides IDEA?

11 A. Yeah.

12 Q. Okay. Okay. Look at page 11.

13 MS. HENDLEY: We're still on 74, right?

14 MS. DIAZ: Yeah, we're still on MOU. Just
15 a couple more questions.

16 BY MS. DIAZ:

17 Q. A(3) actually says: Include an adequate number of
18 ALJs, as determined by agreement, to hear the
19 anticipated caseloads.

20 So did you -- was -- were you out of
21 compliance with MOU or was LARA out of compliance with
22 MOU if they were not providing an adequate number of
23 ALJs?

24 A. I don't think that it was that they weren't providing
25 it. I think they thought that they were providing it

1 and we thought that they were providing it, but we
2 understand things differently now, and we have asked
3 for them to provide additional ALJs --

4 Q. Okay.

5 A. -- and they have agreed to that.

6 Q. At what point did you determine that it was
7 inadequate?

8 A. I think in our conversations with them back in June.

9 Q. June. So June of 2023?

10 A. '4.

11 Q. This past June? Oh, we already had June. Sorry.

12 Q. This past June. Okay.

13 And what caused that change in
14 understanding?

15 A. Our conversation with them. I guess that they -- they
16 shared how their ALJs are assigned, and we thought
17 that all five of them were dedicated specifically to
18 special education. And understanding that they aren't
19 and looking at the volume of due process hearings that
20 we have, we -- we have asked for additional ALJs and
21 for them to be dedicated to special education.

22 MS. DIAZ: Okay. Can we go off the record
23 for one minute? I just want to do a double-check to
24 see if there's anything else, and then I think we're
25 all set.